

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, September 1, 2021
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

1. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-25](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
8-9-2021 [\[710\]](#)

AMALIA GARCIA/MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings
and conclusions. The Moving Party shall submit a proposed
order after the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtors and debtors in possession Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "DIP"), requests allowance of interim compensation in the amount of \$10,150.00 and reimbursement for expenses in the amount of \$165.01 for services rendered from July 1, 2021 through July 31, 2021. Doc. #710.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 11 case. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #33. In determining the amount of reasonable compensation to be awarded to counsel, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing general case administration; (2) prosecuting a Motion for Authority to Sell Real Property Free and Clear of Liens for property identified as "Hacienda 1 Ranch"; (3) working with DIP's real estate broker, buyers, and agents for the sales of Portillo Ranch and Hacienda 1 Ranch; (4) preparing and prosecuting fee and employment applications; (5) assisting DIP and special counsel in prosecuting objections to allowance of claims; and (6) discussing tax consequences of sale of Hacienda 1 Ranch. Doc. #710; Ex. B, Doc. #712. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$10,150.00 and reimbursement of expenses in the amount of \$165.01. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

2. [21-10445](#)-A-11 **IN RE: HARDEEP KAUR**
[LKW-9](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
8-9-2021 [[137](#)]

LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtor and debtor in possession Hardeep Kaur ("DIP"), requests allowance of interim compensation in the amount of \$2,870.00 and reimbursement for expenses in the amount of \$217.06 for services rendered from July 1, 2021 through July 31, 2021. Doc. #137.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 11 case. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #32. In determining the amount of reasonable compensation to be awarded to counsel, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing general case administration; (2) prosecuting a motion to avoid lien under § 522(f); (3) prosecuting a motion to assume a lease; (4) preparing and prosecuting fee applications; and (5) submitting the order confirming the chapter 11 plan.

Doc. #137; Ex. B, Doc. #141. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$2,870.00 and reimbursement of expenses in the amount of \$217.06. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order consistent with DIP's confirmed plan.

1. [21-11215](#)-A-7 **IN RE: GABRIEL/LUXILA GALLEGOS**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
8-13-2021 [\[29\]](#)

MONICA ROBLES/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtors' counsel will inform the debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. In re Minardi, 399 B.R. 841, 846 (Bankr. N.D. Okla. 2009). The reaffirmation agreement, in the absence of a declaration by debtor(s)' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

1. [21-10848](#)-A-7 **IN RE: DONALD RUSSELL**
[RH-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH DONALD KENT RUSSELL
7-28-2021 [\[19\]](#)

JAMES SALVEN/MV
DAVID JENKINS/ATTY. FOR DBT.
ROBERT HAWKINS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted upon the Moving Party's clarification of the
 terms of the settlement agreement at the hearing.

ORDER: The minutes of the hearing will be the court's findings
 and conclusions. The Moving Party shall submit a proposed
 order after the hearing.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). This matter will proceed as scheduled to allow the moving party to clarify on the record the terms of the settlement agreement that is the subject of the motion.

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Donald Kent Russell ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of the possible avoidance action that would involve the sale of Debtor's residential real property known as 21758 Fairway Oaks, Friant, California (the "Property"). Doc. #19.

While Trustee fully explains the dispute giving rise to the proposed settlement, Trustee never explains the terms of the settlement agreement. The only clue is found in the notice of hearing, which states that Debtor has paid \$20,000 to the estate in anticipation of approval of the compromise. Doc. #20. Based on the papers filed in support of the motion, it seems likely that the proposed settlement calls for a one-time payment of \$20,000 by Debtor in consideration of Trustee's agreement not to pursue the avoidance action and sale of the Property. At the hearing, the moving party shall be prepared to clarify on the record the particular terms of the proposed settlement.

Debtor's schedules reflect a value of the Property of \$831,700. Schedule A/B, Doc. #1. Trustee has investigated the assets of the bankruptcy estate and believes that the value of the Property is not less than \$975,000. Decl. of Trustee, Doc. #21. Trustee believes that, based on the liens of record, there is no equity in the Property. However, Trustee contends that the estate could avoid certain penalties and interests of the tax liens of record, and if the

avoided interests are preserved for the benefit of the estate, the estate would have a non-exempt equity interest in the Property and that the estate could receive between \$16,000 and \$25,000 after a sale of the Property. Trustee Decl., Doc. #21. Debtor seeks to avoid having the Property sold by Trustee, and the parties have reached a compromise.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #21. Trustee has similar litigation currently on appeal and states that the legal issues presented in this matter would result in extensive and prolonged litigation. Trustee Decl., Doc. #21. Although success would net a minimum of \$16,000 to the estate, the proposed settlement would not impact or impair the existing lien status of any creditor and does not have any adverse effect on unsecured creditors. Id. It appears Trustee will recover at least \$20,000 for the estate due to Debtor's deposit of that amount with the estate. Doc. #20. Trustee believes that the compromise and settlement is in the best interests of the estate. Trustee Decl., Doc. #21. Assuming Trustee confirms at the hearing that the estate is to receive \$20,000 from Debtor in exchange for the proposed compromise of the estate's claims, the court is inclined to conclude that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id.

Accordingly, pending confirmation of the terms of the settlement agreement at the hearing, the motion will be GRANTED, and the settlement between Trustee and Debtor will be approved.

AMENDED MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB
8-11-2021 [\[35\]](#)

SUKIRAT BAINS/MV
JEFF REICH/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE.

First, in order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)). Here, the property to which the judgment lien attaches is not listed as exempt on the debtors' schedules. See Schedule C, Doc. #1.

Second, service of the motion does not appear to have been made in compliance with Federal Rules of Bankruptcy Procedure 9014 and 7004. Service of process on an insured depository institution is governed by Bankruptcy Rule 7004(h). Information regarding insured depository institutions may be found at <https://banks.data.fdic.gov/bankfind-suite/bank>.

Third, this motion does not comply with Local Rule of Practice ("LBR") 9014-1(d)(3)(D), which requires evidence establishing that the movant is entitled to the relief sought. At the very least, the moving party seeking to avoid a judgment lien under 11 U.S.C. § 522(f) should include the relevant abstract of judgment as an exhibit to the motion and a declaration from a debtor.

Fourth, the motion and related pleadings as filed do not comply with LBR 9014-1(d)(3)(B) and LBR 9014-1(f)(2). The Notice of Hearing filed with this motion cites LBR 9014-1(f)(1) and requires written opposition. However, this motion was filed on less than 28 days' notice and is therefore governed by LBR 9014-1(f)(2), which does not require written opposition.

The court urges counsel to review the local rules in order to be compliant in future matters or those matters may be denied without prejudice for failure. The rules can be accessed on the court's website at <http://www.caeb.uscourts.gov/LocalRules.aspx>.

MOTION TO COMPEL ABANDONMENT
8-17-2021 [\[10\]](#)

REBECCA MANANDIC/MV
HAGOP BEDOYAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Rebecca Gay Manandic ("Debtor"), the chapter 7 debtor in this case, moves the court to compel the chapter 7 trustee to abandon the estate's interest in Debtor's sole proprietorship property management business Creation Station Merced ("CSM"). Doc. #10. CSM is a property management company that collects rents from Debtor's tenants who rent space in real property commonly described as 2400 Martin Luther King Jr. Way, Merced, CA (the "Property"). Doc. #10; Decl. of Debtor, Doc. #12. The monthly rent collected is \$3,490. Debtor Decl. Doc. #12. The Property is owned by Debtor, and Debtor uses the rent collected, along with additional funds deposited by Debtor into the CSM bank account, to pay monthly operating expenses of the Property, including the senior mortgage payment of \$4,203.00. Debtor Decl., Doc. #12. CSM conducts no other business. Id.

11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing In re K.C. Machine & Tool Co., 816 F.2d 238, 245 (6th Cir. 1987)). However, "an order compelling abandonment [under § 554(b)] is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset. . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." Id. (quoting K.C. Machine & Tool Co., 816 F.2d at 246).

Here, Debtor contends that CSM of inconsequential value and benefit to the estate. CSM is a sole proprietorship engaged exclusively in the business of collecting rents from tenants that rent space in the Property, which is owned by Debtor. Doc. #12. CSM has a bank account through which the senior mortgage on the Property is paid. Doc. #12. CSM conducts no other business. Doc. #12.

The court finds that Debtor has met the burden of establishing by a preponderance of the evidence that CSM is of inconsequential value and benefit to the estate.

Accordingly, this motion is GRANTED. The order shall specifically identify the property abandoned.